



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

July 8, 1980

You request a ruling as to the application of the Massachusetts sales tax on meals to certain food products sold in ("convenience stores").

The convenience stores sell a variety of food products for home consumption, including soft drinks in different sizes and containers. The convenience stores also sell soft drinks in conjunction with sandwiches, cheeseburgers, hot dogs, snacks and other foods prepared for immediate consumption off the premises.

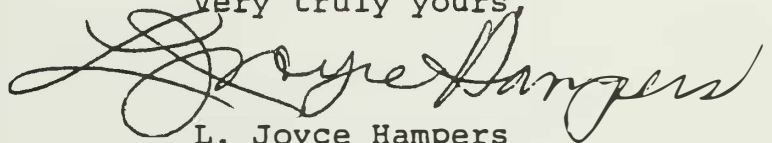
Massachusetts General Laws Chapter 64H, Section 6(h) generally exempts from sales taxation food products for human consumption. This exemption does not apply to food products sold as part of a meal prepared by a restaurant. A delicatessen, grocery, market or bakery is considered a restaurant only to the extent that a part of such a store engages in the sale of dinners, luncheons, barbecued chicken (unless sold whole and unsliced), sandwiches, snacks, pizzas and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters. However, a restaurant, or that part of a grocery or market considered to be a restaurant, may sell certain items of food and beverage without such sales being subject to the Massachusetts sales tax. Among these exempt items are beverages in unopened original containers sold as a unit with a capacity of at least twenty-six fluid ounces.

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Based on the foregoing, it is ruled that when a convenience food store engages in restaurant-like activity, the sales tax on meals applies to sales of: (1) refrigerated soft drinks sold in opened or unopened containers of less than twenty-six ounces; (2) sandwiches, cheeseburgers, hot dogs and other similar items in such form as to be available for immediate consumption; and (3) doughnuts, muffins, bagels and other similar items sold unpackaged and in units of less than six. The sales tax does not apply to soda in unopened original containers when sold as a unit of twenty-six ounces or more.

In order for the Stores to accurately limit the imposition of the sales tax to taxable foods and beverages, separate records should be maintained for restaurant and non-restaurant sales.

Very truly yours,

A handwritten signature in dark ink, appearing to read "L. Joyce Hampers", written in a cursive style.

L. Joyce Hampers
Commissioner of Revenue

LJH:JKH:mf

LR 80-45